

MEMORANDUM OF UNDERSTANDING**Among the Governments of
the United States of America, the Swiss Confederation, and
the Republic of Kazakhstan**

WHEREAS, the Government of the United States of America, the Government of the Republic of Kazakhstan, and the Government of the Swiss Confederation (each a "Party" and together the "Parties") are seeking to put certain funds to use for the benefit of poor citizens of Kazakhstan (as described below);

WHEREAS, in and before July 1999, approximately \$84 million was held on deposit in the account of Orel Capital Ltd. ("Orel") at Credit Agricole Indosuez ("CAI") in Geneva, Switzerland. Orel was a British Virgin Islands corporation beneficially owned by a Liechtenstein foundation, the sole beneficiaries of which were individuals;

WHEREAS, on or about July 29, 1999, the contents of the Orel account were transferred to an account held in the name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan at Pictet & Cie, Geneva, Switzerland;

WHEREAS, on or about August 16, 1999, the \$84 million transferred from the Orel account to the Pictet account was frozen by order of a Swiss examining magistrate;

WHEREAS, on or about April 2, 2003, Indictment 03 Cr. 404 was returned by a federal grand jury in the Southern District of New York charging defendant James H. Giffen with, *inter alia*, violation of the Foreign Corrupt Practices Act ("FCPA"), in violation of 15 U.S.C. § 78dd-2; wire fraud, in violation of 18 U.S.C. § 1343; and money laundering, in violation of 18 U.S.C. §§ 1956 and 1957;

WHEREAS, the Indictment included a criminal forfeiture allegation charging that Giffen should forfeit to the United States pursuant to 18 U.S.C. § 982 all property, real and personal, involved in the money laundering offenses and all property traceable to such property;

WHEREAS, as used herein, the "Funds" include all assets transferred from the Orel account to Account No. [REDACTED] 4025 in the Name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan at Pictet & Cie, Geneva, Switzerland, and all interest, income, benefits or other proceeds traceable thereto;

WHEREAS, the Funds have been restrained pursuant to a Mutual Legal Assistance Treaty request by the United States to Switzerland;

WHEREAS, the Government of the Republic of Kazakhstan claims that it is the sole beneficiary of the Funds and that the Funds are its property;

WHEREAS, the Government of the United States asserts that if it were to forfeit the Funds, in keeping with its practice of using forfeited funds, where practicable and not inconsistent with law, to restore forfeited property to victims of the underlying criminal violation or to protect the rights of innocent persons in the interest of justice, it would endeavor to have the Funds used for the benefit of the people of Kazakhstan;

WHEREAS, the Government of the Republic of Kazakhstan asserts that if it were to obtain release of the Funds, it would endeavor to utilize the Funds for the benefit of the people of Kazakhstan;

WHEREAS, the International Bank of Reconstruction and Development (the "World Bank"), at the request of the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, has agreed to provide technical assistance and supervision for the administration of the Funds for the benefit of the Kazakh people;

WHEREAS, in furtherance of the relationship between the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, the Parties have agreed that the Funds shall be used to benefit the most needy citizens of Kazakhstan, as set forth herein;

NOW, THEREFORE, the Parties hereto agree as follows:

1. Summary of Memorandum of Understanding

This Memorandum of Understanding (MOU) sets forth the terms and conditions by and under which the Parties will consent to release of the Funds.

- 1.1 Contemporaneous with the signing of this MOU, the Governments of the United States of America and the Republic of Kazakhstan shall execute a Stipulation and Order of Settlement ("Stipulation and Order") (Annex 1 hereto) proposing a resolution of forfeiture allegations of the United States and claims of the Republic of Kazakhstan with respect to the Funds. Within ten business days of the signing of this MOU and the Stipulation and Order, the Government of the United States shall file a civil action in the United States District Court for the Southern District of New York (the "Court") seeking forfeiture of the Funds to the United States (the "Civil Forfeiture Action.") As soon as practicable thereafter and no later than one business day after the filing of the Civil Forfeiture Action, the Government of the United States of America shall file the Stipulation and Order in the same Court. After the provision of notice and the expiration of the period for the filing of claims to the Funds, and provided there is no other timely, valid claim to the Funds, or any portion thereof, that complies with 18 U.S.C. § 983 and all other applicable provisions of law, the United States will request that the Court endorse the Stipulation and Order of Settlement and issue a Final Order (the "Final Order") in the action implementing its terms.

- 1.2 The Parties acknowledge and agree that prior to the release of the Funds, or any portion thereof, any and all other claims as to the Funds must have been resolved or extinguished and that the Stipulation and Order must be accepted and approved by the Court.
- 1.3 The release of the Funds, or any portion thereof, is expressly contingent upon the establishment and implementation of three programs to the satisfaction of each Party and in accordance with this MOU and the Stipulation and Order, including:
- (a) a **"BOTA Program,"** for the establishment and administration of projects to benefit poor children in Kazakhstan, as set forth in more detail in Section 3 below. The BOTA program shall be implemented by creation of a non-profit, non-governmental foundation known as the BOTA Foundation. The BOTA Foundation shall be established under the laws of Kazakhstan, and shall be independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The BOTA Program shall be subject to the monitoring of the Governments of the United States of America and the Swiss Confederation. The administration, management, and expenditures of the BOTA Foundation shall be conducted by a reputable international non-governmental organization serving as the BOTA Program Manager. The World Bank shall supervise and monitor the BOTA Program and the administration and expenditures of the Funds, as set forth in the Service Agreement that appears as Annex 2 hereto.
 - (b) a **"Public Finance Management Review (PFMR) Program,"** through which the Government of the Republic of Kazakhstan, with the support of the World Bank, shall undertake a programmatic Public Finance Management Review over a period of five years to examine and analyze the budget management process in order to formulate a comprehensive, realistic and strategic plan for improving public financial management in Kazakhstan, as set forth in the Memorandum of Understanding between the World Bank and the Government of the Republic of Kazakhstan annexed hereto as Annex 3, the reports of which shall be provided by the Government of the Republic of Kazakhstan to the other Parties; and
 - (c) an **"Extractive Industries Transparency Initiative (EITI) Program,"** through which the Government of the Republic of Kazakhstan, with the support of the World Bank, will prepare and implement a comprehensive strategy and action plan to increase transparency over payments and revenues of the extractive industries operating in Kazakhstan (including oil, gas, and mining), as set forth in the Memorandum of Understanding between the World Bank and the Government of the Republic of Kazakhstan annexed hereto as Annex 4, the reports of which shall be provided by the Government of the Republic of Kazakhstan to the other Parties.

- 1.4 The Parties agree that within nine (9) months of the Effective Date, the Program Manager shall certify to each of the Parties that all necessary steps have been taken to establish the BOTA Foundation and engage a BOTA Program Manager. In addition, by August 31, 2007, the Government of the Republic of Kazakhstan shall provide a report to the other Parties on the progress made in implementation of the PFMR and EITI Programs. If any Party, in its sole discretion, determines that actions taken to constitute the BOTA Program, as described in §§3.2, 3.3, 3.4, 3.5, and 3.6 of this MOU, have not been satisfactorily completed or that the Government of the Republic of Kazakhstan has not made substantial and demonstrable progress in implementation of either the PFMR or EITI Programs, this MOU shall terminate upon written notice from that Party to the other Parties, provided that the time to comply with the conditions set forth may be extended by written agreement of all Parties.
- 1.5 The Parties acknowledge that at any time during the term of this MOU the respective United States and Swiss Executive Directors of the World Bank may request an oral briefing from the World Bank with respect to the status or progress of the BOTA Program, PFMR Program, or EITI Program.
- 2. The Funds**
- 2.1 The Parties acknowledge and agree that the Funds shall remain under restraint in Account No. 4025 at Pictet & Cie, Geneva, Switzerland, unless released by unanimous agreement of the Parties in accordance with this MOU and the Final Order entered by the Court, or until adjudicated in further proceedings as provided in the Stipulation and Order.
- 2.2 The Parties acknowledge and agree that the Funds shall be released to the BOTA Program Manager on behalf of the BOTA Foundation in installments as set forth in the Stipulation and Order. All Funds released shall be utilized for implementation of the BOTA Program in accordance with this MOU and the BOTA Program Operational Manual. At the individual discretion of either the Government of the United States of America or the Swiss Confederation, the release of any installment may be made contingent upon its satisfaction of adequate implementation of any of the programs described in Section 1.3.
- 2.3 The Government of the Republic of Kazakhstan hereby guarantees continuing and timely financial support for the BOTA Program up to the full amount of the Funds in the event that the Government of the Republic of Kazakhstan withdraws from participation in either the PFMR or EITI Programs or a Party objects to further release of the Funds based upon failure to implement the PFMR or EITI Programs.

- 2.4 In accordance with terms as set forth in Section 3, the BOTA Program Manager, on behalf of the BOTA Foundation, will make requests to the Parties for release of installments of the Funds for implementation of the BOTA Program. Any such request shall include notice to the World Bank and shall specify how the amounts sought shall be used. No such request shall be granted unless the World Bank provides notice to the Parties that it has no objection to the request. Any redistribution of the Funds among projects or to newly-identified projects must be approved in writing by the World Bank and each of the Parties.
- 2.5 **Costs.** The Parties agree that each Party shall be responsible for its own costs in undertaking its respective activities under this MOU. The Parties further agree that the World Bank shall receive a service fee for its participation in the BOTA Program based on cost recovery for its services rendered under and as specified in the Service Agreement. Should any monies be necessary for start-up costs of the BOTA Program prior to the release of the first installment of the Funds, such monies will be advanced by the Government of the Republic of Kazakhstan. Any such reasonable costs may be reimbursed by the Program Manager, acting on behalf of the BOTA Foundation, from the first installment of the Funds.
- 2.6 **Prohibited Uses.** The Parties agree that the Funds shall not be used for payments (a) prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; (b) for which corrupt, fraudulent, collusive or coercive practices were engaged in to receive any of the Funds; (c) that would support any corrupt or fraudulent activities; or (d) to the Government of the Republic of Kazakhstan, its officials, or their personal or business associates. The Parties further agree that in the event of a determination by any of the Parties that this clause has been violated, whether by the BOTA Program Manager, recipients of grants from the Funds or any other natural or legal person, the termination provisions of Section 9 and the return provisions of Section 8.3 shall become applicable in the individual discretion of the Governments of the United States of America or the Swiss Confederation.
3. **BOTA Program**
- 3.1 **Scope of the BOTA Program.** Subject to the terms and conditions set forth herein and in the Final Order upon its entry by the Court, the Funds shall be utilized for the preparation, administration, and implementation of the "BOTA Program," which shall constitute a program for the benefit of poor children and youth in Kazakhstan. The BOTA Program shall utilize the Funds for conditional cash payments to Kazakh families, scholarships to Kazakh residents, and grants to local and international NGOs in accordance with the BOTA Program Operational Manual. The Funds will be utilized to support activities aimed at improving child and youth welfare, including: reducing child labor, provision of community-based services to disabled children, shelters for runaway and homeless children, improving child nutrition, promoting and developing family-based care for children deprived of parental care, raising awareness of and decreasing child

abuse and violence, reducing juvenile delinquency, expanding youth activities and resource centers, and skills development for school drop-outs, and such other projects as may be determined by the BOTA Board of Supervisors, BOTA Program Manager and the World Bank to be of benefit to poor children and youth of Kazakhstan and their families and enumerated in the BOTA Program Operational Manual.

- 3.2 **Foundation.** The BOTA Program shall be implemented through the creation of an independent, nongovernmental, nonprofit foundation (the "BOTA Foundation") established to receive and disburse the Funds in accordance with this MOU and constituted under Kazakhstan's Law on Non-Commercial Organizations with the assistance of the World Bank as provided in the Service Agreement. The Parties agree that in order to receive any of the Funds, such a foundation must be a purpose-built organization, founded for purposes of implementing development projects for poor children and youth in Kazakhstan; must have the capacity to undertake the contemplated activities; must be party to the Supervisory Agreement (as set forth below); and must be entirely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The Parties further agree that the managerial capacity for the BOTA Foundation must be provided through the BOTA Program Manager as set forth below. The BOTA Foundation shall be established with the intention that it continue to operate as a functioning foundation after the BOTA Program has been completed.
- 3.3 **Founders.** With the assistance of the World Bank (as set forth in the Service Agreement), the BOTA Foundation shall be established by five founders ("Founders") selected by the unanimous agreement of all Parties. The Founders shall be responsible for coordinating the selection of members of the Board of Supervisors as set forth in Section 3.4, and shall not have governance or managerial responsibilities with regard to the BOTA Foundation. All Parties may nominate candidates to serve as Founders. All candidates must be completely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The Founders must be respected community figures and preferably shall be known for their championing of children's causes. The Government of the Republic of Kazakhstan shall have responsibility for notifying individual Founders of their selection.
- 3.4 **Board of Supervisors.** With the assistance of the World Bank (as set forth in the Service Agreement), the BOTA Foundation shall be governed by a seven-member Board of Supervisors ("Board of Supervisors"). The members of the Board of Supervisors shall be a combination of respected international individuals and Kazakh citizens, preferably known for their championing of children's causes, and must be completely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The Governments of the United States of America and the Swiss Confederation, at their option, may each select a member of the Board of Supervisors (and

alternates, as appropriate), who may be a representative of their respective governments or other respected individuals (the "Government Supervisors"). The Founders shall propose selection of all other candidates (and alternates, as appropriate) for consideration by the Parties, who may object to or approve any of the Founder-proposed candidates (the "non-Government Supervisors"). The final slate of Board of Supervisors members shall be individually notified of their selection by the Founders. In the event of a vacancy on the Board of Supervisors for a Government Supervisor, the respective Government may select a replacement. In the event of a vacancy on the Board of Supervisors for a non-Government Supervisor, the Founders shall propose a replacement member for consideration by and subject to the approval or objection of each Party. A Government Supervisor may be removed at any time by the Government that selected the Supervisor. Any non-Government Supervisor may be removed at any time upon a joint decision by the Governments of the United States of America and the Swiss Confederation.

3.5 **Constitutive Documents.** With the assistance of the World Bank (as set forth in the Service Agreement), the Board of Supervisors shall prepare the Charter and any other constitutive documents of the BOTA Foundation required for its formation under Kazakh law (the "Constitutive Documents"). The Parties shall be provided opportunity to review the proposed Constitutive Documents, which must be approved by all Parties prior to their adoption. After approval of the Constitutive Documents by all Parties, the Board of Supervisors as a first order of business shall convene to adopt the agreed Constitutive Documents. If the Board of Supervisors desires any changes to the Constitutive Documents, either initially or subsequently during the term of this MOU, they must be approved by all Parties before becoming effective.

3.6 **BOTA Program Manager.** The implementation, administration, management, and expenditures of the BOTA Program shall be conducted by a reputable international non-governmental organization serving as BOTA Program Manager ("Program Manager"), with the assistance of the World Bank.

(a) The specific responsibilities of the Program Manager shall be set forth in a Management Agreement between the BOTA Foundation and the Program Manager. The Management Agreement shall be drafted by the World Bank (as set forth in the Services Agreement), and must be approved by the Board of Supervisors and all Parties before becoming effective. The Management Agreement shall make the Program Manager subject to any obligations addressed to it in this MOU.

(b) **Selection of Program Manager.** The Board of Supervisors with the assistance of the World Bank (as set forth in the Services Agreement) will conduct an open, competitive bidding process to select the Program Manager. The Board of Supervisors, and the Parties then shall select a Program Manager by unanimous agreement. All candidates for Program

Manager must be completely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates.

- 3.7 **Supervisory Agreement.** The relationship between the BOTA Foundation and the World Bank shall be governed by a supervisory agreement to be entered into by the Foundation and the World Bank (the "Supervisory Agreement"). The Supervisory Agreement must be approved by the Parties before signature and effectiveness. Supervisory services to be provided by the World Bank pursuant to the Supervisory Agreement are set forth in the Service Agreement. The Supervisory Agreement shall make the BOTA Foundation, its Founders, and the Board of Supervisors subject to any obligations addressed to them in this MOU.
- 3.8 **Operational Manual.** The World Bank (as set forth in the Service Agreement) shall prepare the BOTA Program's operational manual (the "Operational Manual"). The Operational Manual must be approved by the Board of Supervisors and each of the Parties before it becomes effective. The Operational Manual will govern the daily operations of each element of the BOTA Program (as specified in Section 3.1 above and the Services Agreement), and will, among other things, set forth the procedures for the award of grants and disbursement of funds. The World Bank, the Board of Supervisors, the Program Manager, and any of the Parties may recommend or request changes to the Operational Manual, either initially or subsequently during the term of this MOU. All requested or recommended changes must be approved in writing by all the Parties and the Board of Supervisors before becoming effective.
- 3.9 **BOTA Program Operational Account ("Operational Account").** Funds released to the BOTA Foundation in accordance with Section 3 and the Stipulation and Order shall be deposited into a BOTA Program Operational Account to be established and maintained by the BOTA Program Manager on behalf of the Foundation and from which the BOTA Program Manager may make payments or disbursements in accordance with the terms of the Operational Manual and this MOU. The Board of Supervisors, the World Bank and the Parties shall at all times have the right to review records of the BOTA Program Operational Account upon request.
- 3.10 **Accounts and Audits.** The Board of Supervisors and the Program Manager, with the assistance of the World Bank (as set forth in the Service Agreement), shall:
- (a) ensure that a financial management system is maintained and financial statements are prepared, in accordance with consistently applied accounting standards acceptable to the World Bank, both in a manner adequate to reflect the operations, resources and expenditures related to the activities funded;

(b) ensure that interim unaudited financial reports for the activities funded by the BOTA Foundation are prepared and furnished to the World Bank and the Parties not later than three months after the end of each six-month period, covering the six-month period, in form and substance satisfactory to the World Bank;

(c) select independent auditors (the "Auditors"), whose appointment must be approved by all Parties, with the World Bank providing terms of reference for the Auditors' engagement and reviewing the short list of candidates on a no objection basis;

(d) have Financial Statements for the activities funded by the BOTA Foundation audited by the Auditors in accordance with consistently applied auditing standards acceptable to the World Bank, to be provided to the World Bank and the Parties not later than six months after the end of the BOTA Program's fiscal year; and

(e) ensure that: (i) all records evidencing expenditures related to activities funded by the Funds are retained until at least five years after the World Bank and Parties have received all the audited Financial Statements covering the Term of this MOU; and (ii) the representatives of the World Bank and the Parties are able to examine such records, and are provided all such information concerning such records as they may from time to time request.

- 3.11 **Work Plan.** With the assistance of the World Bank (as set forth in the Service Agreement), the BOTA Foundation and Program Manager shall prepare annual work plans for use of the Funds in a manner consistent with this MOU and the Operational Manual. The Foundation shall present such work plans when completed to the Parties for their approval or objection.
- 3.12 **Progress Reports.** The Parties will receive regular reports on the status of the BOTA Program prepared by the World Bank in accordance with terms set forth in the Service Agreement.
- 3.13 **Timing.** The Funds are expected to be fully disbursed by the Foundation within five years of the Final Order. The Parties anticipate that establishment of the BOTA Program and start-up of operations shall take approximately one year.

4. PFMR Program

- 4.1 Scope of PFMR Program.** On December 1, 2006, the Government of the Republic of Kazakhstan and the World Bank executed a written Memorandum of Understanding regarding Public Finance Management ("PFM MOU"), attached at Annex 3, through which the Government of the Republic of Kazakhstan has requested and the World Bank has agreed to provide technical assistance and advice for a minimum of five years in preparing a programmatic Public Finance Management Review and in implementing its recommendations. As set forth in the PFM MOU, under this program, the Government of the Republic of Kazakhstan, with the support of the World Bank, will examine and analyze the budget management process in specified sectors to formulate a comprehensive, realistic and strategic plan for improving public financial management in Kazakhstan. The PFM MOU contemplates that the review will begin with priority sectors such as education and health and progressively expand coverage to reach 90 percent of the budget over the PFM Review period of five years. Emphasis will also be given to analysis of recurrent expenditures and assessment of extra-budgetary funds. Pursuant to the PFM MOU, the Government of the Republic of Kazakhstan has committed to using the PFM Review as an analytical, information and consensus-building tool for policy design and implementation, and has also committed to consider other measures for implementation through active collaboration with NGOs.
- 4.2 Disclosure of PFMR analyses.** Each report resulting from a programmatic PFM Review shall be considered a report emanating from economic and sector work (ESW) of the World Bank, and, therefore, consistent with the World Bank Policy on Disclosure of Information, shall be distributed to the Board of Executive Directors of the World Bank and made publicly available. Each such report may also be provided directly to the Parties.
- 4.3 Reports to the Parties.** The Parties anticipate that the World Bank shall provide to the Government of the Republic of Kazakhstan periodic supervision reports regarding the PFMR Program. The Government of the Republic of Kazakhstan shall provide all supervision reports received from the World Bank pursuant to the PFMR MOU to the other Parties. The Government of the Republic of Kazakhstan hereby agrees and authorizes the World Bank to make available all such supervision reports to the United States and Swiss Executive Directors of the World Bank. In addition, the Governments of the United States of America and the Swiss Confederation each may request, on an ad hoc basis, that the Government of the Republic of Kazakhstan provide an interim report on the status of the PFMR Program. The Government of the Republic of Kazakhstan agrees to provide such ad hoc reports upon request.

5. EITI Program

- 5.1 Scope of the EITI Program.** On December 1, 2006, the Government of the Republic of Kazakhstan and the World Bank executed a written Memorandum of Understanding (the "EITI MOU"), attached as Annex 4, through which the Government of the Republic of Kazakhstan has requested and the World Bank has agreed to provide technical assistance and advice for a minimum of three years to support measures intended to increase transparency over payments and revenues of extractive industries operating in Kazakhstan. As set forth in the EITI MOU, the Government of the Republic of Kazakhstan has indicated that it has established a dedicated Secretariat to coordinate and support EITI efforts in Kazakhstan and has directed that the Secretariat develop a work plan by February 1, 2007, to improve management and transparency of extractive industries companies and to analyze actions needed for implementation of the Extractive Industries' Transparency Initiative (EITI) in Kazakhstan. Under the EITI MOU, the Government of the Republic of Kazakhstan has committed to take specified steps to implement the Extractive Industries Transparency Initiatives and its principles, including, but not limited to, ensuring full participation of all extractive industry (oil, gas, and mining) companies; ensuring integrity of reported data; establishing a comprehensive work plan; ensuring adequate and sustainable financing for EITI implementation; appointing and managing an appropriate consulting and auditing firm; conducting national and regional workshops on EITI data reporting and implementation; and such other measures as may be deemed appropriate through active collaboration with non-governmental organizations. Under the EITI MOU, the World Bank has agreed to support the EITI process in Kazakhstan, provide technical assistance, assist in devising monitoring indicators, and provide additional implementation support, such as for civil society engagement in EITI.
- 5.2 Annual Reports.** The Government of the Republic of Kazakhstan agrees to engage a qualified and independent expert to prepare reports on an annual basis regarding the actions taken and the results achieved to implement the EITI Program, which reports alternatively may be reports of independent validations performed in accordance with the guidelines and procedures issued by the Secretariat of the Extractive Industries Transparency Initiative. Such reports shall be provided to the other Parties and made publicly available.
- 5.3 Reports to the Parties.** The Parties anticipate that the World Bank shall provide to the Government of the Republic of Kazakhstan periodic supervision reports regarding the EITI Program. The Government of the Republic of Kazakhstan shall provide all supervision reports received from the World Bank pursuant to the EITI MOU to the other Parties. The Government of the Republic of Kazakhstan hereby agrees and authorizes the World Bank to make available all such supervision reports to the United States and Swiss Executive Directors of the World Bank. In addition, the Governments of the United States of America and the Swiss Confederation each may request, on an ad hoc basis, that the

Government of the Republic of Kazakhstan provide an interim report on the status of the EITI Program. The Government of the Republic of Kazakhstan agrees to provide such ad hoc reports upon request.

6. Disclosure

- 6.1 The Parties agree that this MOU and associated annexes shall be publicly disclosed upon the filing of the Stipulation and Order described in Section 1.1 above by the United States of America. The Parties shall also provide copies of the MOU and associated annexes to each Founder, member of the Board of Supervisors, and the BOTA Program Manager.

7. Communications

- 7.1 Communications and notices under this MOU may be made by email, fax or letter as follows (all contacts specified in (a) through (c) below hereinafter called the "Contacts"):

(a) Communications made to the Government of the United States of America shall be directed to the Deputy Assistant Attorney General for the Criminal Division, United States Department of Justice (the US Contact);

(b) Communications made to the Government of the Swiss Confederation shall be directed to the Head of the Economic Cooperation and Development Division, State Secretariat for Economic Affairs (SECO) (the Swiss Contact);

(c) Communications made to the Government of the Republic of Kazakhstan shall be directed to the Prime Minister of the Republic of Kazakhstan (the Kazakh Contact).

- 7.2 Upon execution of this MOU, each Party shall promptly provide notice to each other Party of the name, title, address, electronic mail address, and telephone contact information for its Contact.
- 7.3 The Parties agree that to the extent this MOU refers to notices or communications to the Parties, or any consents, approvals or objections from the Parties, or any decision making on the part of the Parties, any communication to or from, as the case may be, the respective Contact(s) shall constitute a communication to the Party represented by that Contact. Notices, consents, approvals, or objections of any Party must be in writing and may be made by (a) a written statement or agreement signed directly or by countersignature; (b) a series of faxes signed directly or by countersignature; or (c) an exchange of emails confirming agreement, consent, approval or objection on the part of the Contact.
- 7.4 Each Party may amend the identity of the Contact(s) specified above by providing written notice to the other Parties of the change of identity of the person(s)

designated, together with address information sufficient to communicate with the amended Contact(s). Each Party's designated Contact may delegate his/her authority to receive or provide a notice, communication, consent, approval or objection that relates to a particular issue or matter by providing notice to the other Parties of the identity of the person(s) who shall have such delegated authority, together with address information sufficient to communicate with the amended Contact(s).

8. Irregularities

- 8.1 In the event the World Bank detects any irregularities while performing the Services, such as noncompliance with the Operational Manual, the World Bank shall, as set forth in the Service Agreement, notify the Parties, the BOTA Board of Supervisors and the BOTA Program Manager. Thereafter no further actions shall be expected or required from the World Bank, and any remedial actions shall be decided among the Parties in consultation with the BOTA Board of Supervisors, Program Manager and the World Bank.
- 8.2 In the event any of the Parties detects any irregularities in the operation of the BOTA Program, it shall notify all other Parties, the World Bank, the BOTA Board of Supervisors and the BOTA Program Manager. Any remedial actions shall be decided among the Parties in consultation with the World Bank, the BOTA Board of Supervisors and the Program Manager.
- 8.3 The Governments of the United States of America and the Swiss Confederation each shall independently retain the right at all times, including after the Term of this MOU, to seek the return of any or all of the Funds after their release if either in its sole discretion determines that any of the Funds have been used in a manner inconsistent with the terms of this MOU, the Stipulation and Order, the Supervisory Agreement or the Operational Manual. Such request shall be made in writing to the Program Manager, with copies to the BOTA Board of Supervisors, the World Bank and the other Parties, and shall include a justification for such return. If no Party disputes the stated justification and the BOTA Program Manager fails to return any Funds so requested for deposit in the Pictet & Cie account within 60 days of the request, the Government of the Republic of Kazakhstan shall deposit into the Pictet & Cie account an amount equal to the requested sum, which amount shall be made part of the Funds remaining in the account. If the Government of the Republic of Kazakhstan disputes the stated justification, paragraph 18 of the Stipulation and Order shall apply.

9. Term and Termination

- 9.1 This MOU shall enter into force upon signature by all the Parties (the "Effective Date") and shall continue in force for five years or such earlier period in which all of the Funds have been fully expended, except (i) as may be extended by unanimous agreement of the Parties, or (ii) as may be earlier terminated in

accordance with this MOU (the "Term"). If this MOU is extended, the World Bank may correspondingly extend the terms of the Service Agreement, Supervisory Agreement and Management Agreement, if so requested by the Parties.

- 9.2 If the Court does not accept and approve the Stipulation and Order and enter a Final Order, this MOU shall terminate. If the Stipulation and Order becomes void for any other reason, this MOU shall also terminate. If the Stipulation and Order is terminated, this MOU may be terminated by any Party, upon written notice to the other Parties.
- 9.3 This MOU may be terminated at any time upon mutual agreement of all the Parties.
- 9.4 This MOU may also be terminated by either the Government of the United States of America or the Government of the Swiss Confederation upon written notice to the other Parties for insufficient progress in implementation in accordance with Section 1.4, in the event of irregularities as provided in Section 8, or upon a determination of prohibited use as provided in Section 2.6. If this MOU is terminated, the return provisions of Section 8.3 shall become applicable.
- 9.5 If this MOU is terminated it shall have no further force or effect, except as provided in Section 9.7, and each Party shall reserve the right to assert all claims it possessed as of the Effective Date of this MOU, with respect to any portion of the Funds remaining in or which may be re-deposited into the Pictet & Cie account.
- 9.6 Unless otherwise agreed by the Parties, if (i) the World Bank elects to terminate the Service Agreement (as provided in that Agreement), or (ii) this MOU is terminated or expires by its Term, then the Parties and the Foundation shall take all appropriate steps to terminate the BOTA Program activities in an orderly manner; to settle promptly all outstanding BOTA Program matters; and to cause the Foundation to return and re-deposit any uncommitted portion of the Funds to the Pictet & Cie account to be made part of the Funds remaining in the account.
- 9.7 Notwithstanding the expiration or termination of this MOU, the provisions of this MOU and the Stipulation and Order relating to (i) liability and indemnity, and (ii) return shall continue in force for five years after expiration or termination of this MOU as to any events occurring during the Term of the MOU.

10. Limitations of Liability

- 10.1 Except as provided in the Stipulation and Order, nothing in this MOU is intended to be, or should be construed as, a waiver of the privileges and immunities of any Party or its officers and employees, which privileges and immunities are hereby specifically reserved.

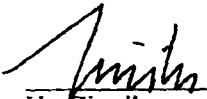
11. General

- 11.1 The Stipulation and Order between the Governments of the United States of America and the Republic of Kazakhstan is expressly incorporated into this MOU.
- 11.2 This MOU, including any annexes, along with any other agreements referenced herein, comprises the entire agreement and understanding among the Parties relating to the subject matter hereof. It, along with the other referenced agreements, supersedes any prior or side arrangements, agreements or understandings relating to the subject matter. This MOU may not be amended except through the written agreement of all of the Parties. The Governments of the United States and the Republic of Kazakhstan shall promptly notify the Court of any such amendment.
- 11.3 The Parties shall implement this MOU and all activities thereunder in accordance with their respective domestic law.
- 11.4 This MOU does not give rise to any rights on the part of any private person or non-party.

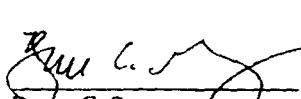
IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, D.C., in four originals, this 2nd day of May, 2007, in the English language.

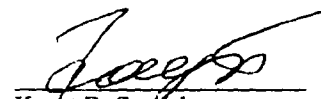
FOR THE GOVERNMENT
OF THE SWISS
CONFEDERATION


Urs Ziswiler
Ambassador of Switzerland
to the United States of
America

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA


Bruce C. Swartz
Deputy Assistant Attorney
General, Criminal Division
U.S. Department of Justice

FOR THE GOVERNMENT
OF THE REPUBLIC OF
KAZAKHSTAN


Kapat B. Saudabayev
Ambassador of Kazakhstan
to the United States of
America

Annex 1	Stipulation and Order of Settlement
Annex 2	Service Agreement
Annex 3	PFMR MOU
Annex 4	EITI MOU

Attachment

BOTA MOU ANNEX 1

**(Omitted. Annex 1 is the
Stipulation and Order of Settlement
to which the MOU is an attachment.)**

BOTA MOU ANNEX 2

SERVICE AGREEMENT FOR THE BOTA FOUNDATION
among the International Bank for Reconstruction and Development and the
Governments of the United States of America, the Swiss Confederation,
and the Republic of Kazakhstan

WHEREAS the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan (each a Government, and together the Governments) have agreed to establish a program for supporting the development of poor children and youth in Kazakhstan (the "BOTA Program"), which Program will be financed by approximately \$84 million in funds (together with all interest, income, benefits or other proceeds traceable thereto) held in account no. 4025 in the name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan at Pictet & Cie in Switzerland that have been restrained pursuant to a Mutual Legal Assistance Treaty request by the United States of America to Switzerland and which upon judicial approval will be released under a stipulation and order executed by the United States of America and the Republic of Kazakhstan as set forth in the May 2, 2007, Memorandum of Understanding between the Governments; and

WHEREAS at the request of the Governments, the International Bank for Reconstruction and Development (the "World Bank", and collectively with the Governments the Parties, and each a Party) has agreed to provide the services set forth below in support of establishment of the BOTA Program;

NOW THEREFORE the Parties hereto agree as follows as of May 2, 2007 (the Effective Date):

1. Scope of Work

- 1.1 As requested by the Governments, the World Bank will provide the Services (as defined in this Agreement) to the Governments and the foundation established under Kazakh law (the "BOTA Foundation") for purposes of supporting the development of poor children and youth in Kazakhstan through the BOTA Program, in accordance with this Agreement. The World Bank will provide the Services as an independent service provider, using its own staff and consultants. The Parties agree that the World Bank's role in the BOTA Program is limited to rendering the Services as specified in this Agreement and the Supervisory Agreement (as defined below), and it shall have no responsibility for any activities outside the scope of those Agreements.
- 1.2 The Governments acknowledge and agree that the BOTA Foundation and the BOTA Program Manager will be responsible for implementation of the BOTA Program in accordance with the Operational Manual (as defined in Section 2.6 below), the Supervisory Agreement (as defined in Section 2.5 below), and the Management Agreement (as defined in Section 2.4 below).

2. Services To Be Provided by the World Bank

- 2.1 BOTA Foundation. The World Bank will assist in the establishment of the BOTA Foundation, which shall be an independent, nongovernmental, nonprofit foundation constituted under Kazakhstan's Law on Non-Commercial Organizations. The Parties agree that in order to receive any funds for the BOTA Program, the BOTA Foundation must be a purpose-built organization, founded for purposes of implementing development projects for poor children and youth in Kazakhstan; must, with the Program Manager, have the capacity to undertake the contemplated activities; must be party to the Supervisory Agreement, and must be entirely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The Parties further agree that the managerial capacity for the BOTA Foundation shall be provided through the Program Manager (as defined below). The Parties further agree that the Governments

shall be responsible for the nomination and selection of candidates to serve as founders (the "Founders") of the BOTA Foundation. The BOTA Foundation shall be established with the intention that it continue to operate as a functioning foundation after the BOTA Program under this Agreement has been completed.

- 2.2 Board of Supervisors. The World Bank will assist the Founders and the Governments in the establishment of and selection of members of a seven-member Board of Supervisors of the BOTA Foundation ("Board of Supervisors"), which shall govern the BOTA Foundation. The members of the Board of Supervisors shall be a combination of respected international individuals and Kazakh citizens, preferably known for their championing of children's causes, and must be completely independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates. The Governments of the United States of America and the Swiss Confederation, at their option, may each select a member of the Board of Supervisors (and alternates, as appropriate), who may be representatives of their respective governments or other respected individuals (the "Government Supervisors"). The Founders shall propose selection of all other candidates (and alternates, as appropriate) for consideration by the Governments, who may object to or approve any of the Founder-proposed candidates (the "non-Government Supervisors"). The final slate of Board of Supervisors members shall be individually notified of their selection by the Founders. In the event of a vacancy on the Board of Supervisors for a Government Supervisor, the respective Government may select a replacement. In the event of a vacancy on the Board of Supervisors for a non-Government Supervisor, the Founders shall propose a replacement member for consideration by and subject to the approval or objection of each Government. A Government Supervisor may be removed at any time by the Government that selected the Supervisor. Any non-Government Supervisor may be removed at any time upon a joint decision by the Governments of the United States of America and the Swiss Confederation.
- 2.3 Constitutive Documents. The World Bank will assist the Board of Supervisors in preparing the charter and any other constitutive documents of the BOTA Foundation required for its formation under Kazakh law (the "Constitutive Documents"). The Governments shall be provided opportunity to review the proposed Constitutive Documents, which must be approved by the Governments prior to their adoption by the Board of Supervisors. If the Board of Supervisors desires any changes to the Constitutive Documents, either initially or subsequently during the term of this Agreement, they must be approved by the Governments before becoming effective.
- 2.4 BOTA Program Manager. The World Bank will assist the Board of Supervisors in conducting an open, competitive bidding process to select a reputable, international, non-governmental organization to be engaged by the BOTA Foundation for the implementation, administration, management, and expenditures of the BOTA Program (the "Program Manager"). The specific responsibilities of the Program Manager shall be set forth in a Management Agreement between the BOTA Foundation and the Program Manager (the "Management Agreement"). The Management Agreement shall make the Program Manager subject to any and all obligations established for that position in this Agreement. The World Bank shall prepare a draft Management Agreement for consideration by the Board of Supervisors and each Government before publication during the bidding process. The Management Agreement must be approved by the Board of Supervisors and each Government before signature and effectiveness. The World Bank shall further assist the Board of Supervisors in posting the terms of reference for the position of Program Manager, which shall serve as a basis for soliciting applications, screening all applicants and providing a short list of recommended candidates to the Governments for consideration. The Board of Supervisors and the Governments then shall select a Program Manager by unanimous agreement. All candidates for Program Manager must be completely

independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates.

- 2.5 Supervisory Agreement. The relationship between the BOTA Foundation and the World Bank shall be governed by a supervisory agreement to be entered into by the BOTA Foundation and the World Bank (the "Supervisory Agreement"). The Supervisory Agreement must be approved by the Governments before signature and effectiveness. Among the supervisory services to be provided by the World Bank pursuant to the Supervisory Agreement are the following: (i) reviewing progress reports and audited financial statements to monitor technical and fiduciary compliance by the BOTA Foundation with the Operational Manual; (ii) review of BOTA Foundation requests for funds; and (iii) training and capacity building for the BOTA Foundation in the areas of procurement, financial management, calls for grants, preparation of work plans, evaluation systems, and such other technical assistance as the World Bank in its discretion deems necessary or appropriate. The Supervisory Agreement shall make the BOTA Foundation and its Board of Supervisors subject to any and all obligations established for such entities in this Agreement.
- 2.6 Operational Manual. The World Bank shall prepare the BOTA Program's operational manual (the "Operational Manual"). The Operational Manual must be approved by the Board of Supervisors and each of the Governments before it becomes effective. The Operational Manual will govern the daily operations of each element of the BOTA Program and will, among other things, set forth the procedures for the award of grants and disbursement of funds. Funds released to the BOTA Foundation for the BOTA Program shall be deposited into an operational account (the "Operational Account") to be established and maintained by the Program Manager on behalf of the Foundation and from which the Program Manager may make payments or disbursements in accordance with the terms of the Operational Manual. The Board of Supervisors and the Parties shall at all times have the right to review records of the Operational Account upon request. The World Bank, the Board of Supervisors, the Program Manager, and any of the Governments may recommend or request changes to the Operational Manual, either initially or subsequently during the Term (as defined below). All requested or recommended changes must be approved in writing by all the Parties and the Board of Supervisors before becoming effective.
- 2.7 Accounts and Audits. The World Bank will provide capacity building and guidelines to assist the BOTA Foundation:
- (a) to ensure that a financial management system is maintained and financial statements are prepared, in accordance with consistently applied accounting standards acceptable to the World Bank, both in a manner adequate to reflect the operations, resources and expenditures related to the activities funded;
 - (b) to ensure that interim unaudited financial reports for the activities funded by the BOTA Foundation are prepared and furnished to the Parties not later than three months after the end of each six-month period, covering the six-month period, in form and substance satisfactory to the World Bank;
 - (c) to select independent auditors (the "Auditors"), whose appointment must be approved by the Governments, with the World Bank providing terms of reference for the Auditors' engagement and reviewing the short list of candidates on a no objection basis;
 - (d) to have financial statements for the activities funded by the BOTA Foundation audited by the Auditors in accordance with consistently applied auditing standards acceptable to the World

Bank, to be provided to the Parties not later than six months after the end of the BOTA Foundation's fiscal year; and

(e) to ensure that: (i) all records evidencing expenditures related to activities funded by the BOTA Foundation are retained until at least five years after the Parties have received all the audited Financial Statements covering the Term of this Agreement; and (ii) the representatives of the Parties are able to examine such records, and are provided all such information concerning such records as they may from time to time request.

- 2.8 Training and Capacity Building. The World Bank will provide training and capacity building for the BOTA Foundation in the areas of procurement, financial management, calls for grants, preparation of work plans, evaluation systems, and such other technical assistance as the World Bank in its discretion deems necessary or appropriate. The Parties agree that the Program Manager shall be responsible for financial management, budgets, work plans and other aspects of BOTA Foundation management.
- 2.9 Progress Reports. The World Bank will provide supervision reports to the Governments on the status of the BOTA Program implementation in accordance with Bank policies, practices and procedures and as specified in the Operational Manual. Such reports shall be provided to the Governments on a semi-annual basis and may include information regarding the BOTA Foundation's procurement practices, financial management, audits, development impact monitoring, and evaluation systems in implementation of the BOTA Program, and such other information as the World Bank may deem necessary or appropriate. Such reports will be based in part on spot checks of implemented activity, as the World Bank considers appropriate, and will identify material discrepancies that are found.
- 2.10 Funding. The World Bank will assist the BOTA Foundation and the Governments in reviewing requests for the release or reallocation of funds as follows:
- (a) The Program Manager, on behalf of the BOTA Foundation, may make requests to the Governments for release of installments of funds for implementation of the BOTA Program. Any such request shall include notice to the World Bank and shall specify how the amounts sought will be used. The World Bank shall inform the Governments whether it has any objection to each such request. No such request shall be granted unless the World Bank provides notice to the Governments that it has no objection to the request.
- (b) All funds provided to the BOTA Foundation under this Agreement shall be utilized for the establishment of the BOTA Foundation in accordance with this Agreement and the preparation, administration and implementation of the BOTA Program in accordance with the Operational Manual. The BOTA Program shall constitute a program for the benefit of poor children and youth in Kazakhstan. The BOTA Foundation shall utilize funds provided under the BOTA Program for conditional cash payments to Kazakh families, scholarships to Kazakh residents, and grants to local and international NGOs in accordance with the Operational Manual. BOTA Program funds will be utilized to support activities aimed at improving child and youth welfare, including: reducing child labor, provision of community-based services to disabled children, shelters for runaway and homeless children, improving child nutrition, promoting and developing family-based care for children deprived of parental care, raising awareness of and decreasing child abuse and violence, reducing juvenile delinquency, expanding youth activities and resource centers, and skills development for school drop-outs, and such other projects as may be determined by the Board of Supervisors, the Program Manager and the World Bank to be of

benefit to poor children and youth of Kazakhstan and their families and enumerated in the Operational Manual.

(c) The World Bank shall consult with the Board of Supervisors and Program Manager regarding any reallocation of funds that the World Bank, Board of Supervisors or Program Manager may propose to provide the maximum benefit to poor children and youth in Kazakhstan. Any redistribution of funds among projects or to newly-identified projects must be approved in writing by each of the Parties.

(d) The Parties agree that the BOTA Program funds shall not be used for payments (i) prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; (ii) for which corrupt, fraudulent, collusive or coercive practices were engaged in to receive any of the funds; (iii) that would support any corrupt or fraudulent activities; or (iv) to the Government of the Republic of Kazakhstan, its officials, or their personal or business associates. The Parties agree that in the event of a determination by any of the Parties that this clause has been violated, whether by the Program Manager, recipients of grants from the funds or any other natural or legal person, the termination provisions of Section 4 and the return provisions of Section 9.3 shall become applicable in the individual discretion of the Governments of the United States of America or the Swiss Confederation.

3. Administration of Services

- 3.1 It is expected that the World Bank's ordinary interaction with the BOTA Foundation in connection with this Agreement will occur directly without direct coordination with or inclusion of any Government. The Parties agree that the World Bank's ability to provide Services will require that the BOTA Foundation cooperate with the World Bank, including providing access to sites and records that may be required in fulfillment of the World Bank's obligations under this Agreement. The World Bank will make reasonable efforts to obtain such access to sites and records. The World Bank will promptly notify the Governments of any problems regarding BOTA Foundation cooperation adversely affecting its ability to fulfill its obligations under this Agreement.
- 3.2 The Government of the Republic of Kazakhstan agrees to cooperate with the World Bank in all respects to ensure the World Bank's ability to perform the Services as set forth herein and intended by the Parties.
- 3.3 The World Bank will exercise the same level of care in performing the Services under this Agreement as it exercises in its monitoring activities for its own lending and grant making operations.

4. Duration and Termination

- 4.1 The funds under restraint in the Pictet & Cie account from which the BOTA Program is to be financed (the "Pictet & Cie Funds") are expected to be disbursed by the BOTA Foundation over a period of five years, of which the first year is expected to be for the establishment of the BOTA Foundation and preparation of the BOTA Program. This Agreement shall be in force from the Effective Date for five years or such earlier period in which all Pictet & Cie Funds have been fully expended, except (i) as may be extended by unanimous agreement of the Parties, or (ii) as may be terminated in accordance with this Agreement (the "Term"). If this Agreement is extended, the Supervisory Agreement and Management Agreement may correspondingly be extended, if requested by the Governments.
- 4.2 Sections 2 and 5 of this Agreement shall be subject to annual review and may be modified by mutual agreement of all Parties.
- 4.3 This Agreement may be terminated at any time upon mutual agreement of all the Parties. The effects and implications of such termination shall be mutually agreed by all the Parties in advance of such termination.
- 4.4 This Agreement may also be terminated by either the Government of the United States of America or the Government of the Swiss Confederation upon written notice to the other Parties in the event of irregularities as provided in Section 9 or upon a determination of prohibited use as provided in Section 2.10(d). In addition, if the May 2, 2007, Memorandum of Understanding between the Governments is terminated, this Agreement may be terminated by any Party. If this Agreement is terminated, the return provisions of Section 9.3 shall become applicable. If this Agreement is terminated, each Government shall reserve the right to assert all claims as to the Pictet & Cie Funds that it possessed as of the Effective Date; provided that the World Bank shall not be held liable for any expenditures made in good faith reliance on this Agreement.
- 4.5 Notwithstanding any other statement herein, the World Bank may terminate its participation in this Agreement upon ninety days' notice to the other Parties by notifying their respective Representatives. Upon such notice, the Parties shall take all appropriate steps to terminate the BOTA Program activities in an orderly manner; to settle promptly all outstanding BOTA Program matters; and to cause the BOTA Foundation to return and re-deposit any uncommitted portion of the Pictet & Cie Funds to the originating account. Subject to the unanimous agreement of the Governments, the Governments may arrange to replace the World Bank with another entity or take other steps that would enable the BOTA Program to continue operating.
- 4.6 Notwithstanding the expiration or termination of this Agreement, the provisions of this Agreement relating to (i) liability and indemnity, and (ii) payment shall continue in full force and effect for five years after such termination or expiration as to any events occurring within the duration of this Agreement.

5. Payment

- 5.1 General. The Governments have agreed that the Government of the Republic of Kazakhstan will pay a fixed annual fee to the World Bank for the Services in accordance with Section 5.2 below. Such fixed annual fee shall be calculated on a full cost recovery basis. Payment of the fixed annual fee will be made in advance at the beginning of each quarter in quarterly installments payable on each 15 March, 15 June, 15 September and 15 December; provided that if any such date is not a business day in Kazakhstan, then the payment shall be made on the next business

day; and provided further that the first payment will be made on or after the Effective Date, on a date to be agreed by the Governments and the World Bank, and will be pro-rated for the period from the Effective Date until the next quarterly payment date. In the event of termination under Section 4, the World Bank shall refund to the Government of the Republic of Kazakhstan that portion of the quarterly payment made in advance to the World Bank that represents the remaining portion of the quarter after the date of termination.

- 5.2 Total Fee and Cost Breakdown. The fixed annual fee to be paid the World Bank in accordance with the conditions described in the preceding Section 5.1 shall be:

<u>Activity</u>	<u>Fee</u>
Preparatory Services (Year 1)	US\$500,000 total
Ongoing Services (Years 2 to 5)	US\$150,000 per year

- 5.3 Adjustments. The Parties agree that the descriptions and amounts shown in the preceding Section 5.2 will be reviewed annually and adjusted as appropriate to enable full cost recovery for the Services provided hereunder on the part of the World Bank.

- 5.4 Should any monies be necessary for start-up costs of the BOTA Program prior to the release of the first installment of the funds, such monies will be advanced by the Government of the Republic of Kazakhstan. Any such reasonable costs, not including World Bank service fees, may be reimbursed by the Program Manager, acting on behalf of the BOTA Foundation, from the first installment of the funds.

6. Claims and Liability

- 6.1 The World Bank shall not be liable to the Governments for any loss, cost, damage, suits, claims, demands or liability (Damages) that they may incur as a result of the Services. The Government of the Republic of Kazakhstan agrees that the Republic of Kazakhstan shall indemnify and hold the World Bank and its officers, directors, agents, subcontractors and employees (personnel) harmless from any Damages to which the World Bank or its personnel may be subject as a result of claims by third parties arising in the implementation of this Agreement or any activities undertaken in connection therewith, except those resulting from the gross negligence or willful misconduct of the World Bank or its personnel. The obligations under this Section shall not lapse upon expiration or termination of this Agreement but shall extend after expiration or termination of this Agreement.

- 6.2 Throughout the implementation of this Agreement and any activity or project pursuant thereto, each Party will maintain its usual and customary insurance for its own officers, employees and operations.

7. Disputes

- 7.1 Any dispute, controversy or claim between the World Bank and the Government of the Republic of Kazakhstan in connection with the World Bank's provision of Services under this Agreement which is not settled by agreement in writing shall be finally settled by arbitration in accordance with the United Nations Commission on International Law (UNCITRAL) Arbitration Rules then currently in force, and the Appointing Authority shall be the Secretary-General of the Permanent Court of Arbitration. The language of arbitration shall be English and the venue shall be Washington, DC. In the event of conflict between the UNCITRAL Arbitration Rules and the terms of this Agreement, the terms of this Agreement shall govern.

7.2 The rights and obligations of the Parties under this Agreement shall be valid and enforceable in accordance with their terms notwithstanding the law of any state or political subdivision thereof to the contrary.

8. Disclosure

8.1 The Parties agree that this Agreement and the activities contemplated herein may be disclosed upon the filing of the Stipulation and Order.

8.2 The World Bank may disclose to the public this Agreement and information with respect to activities contemplated herein in accordance with the World Bank's Policy on the Disclosure of Information.

9. Irregularities

9.1 In the event the World Bank detects any irregularities in connection with the BOTA Program while performing the Services, such as noncompliance with the Operational Manual or the Supervisory Agreement or any fraud or corruption, the World Bank shall notify the Governments, the BOTA Foundation and the Program Manager of the irregularities. Thereafter no further actions shall be expected or required from the World Bank, and any remedial actions shall be decided among the Governments in consultation with the World Bank and the BOTA Foundation.

9.2 In the event a Government detects any BOTA Program irregularities, it shall notify the other Governments, the World Bank, the BOTA Foundation and the Program Manager of the irregularities. Any remedial actions shall be decided among the Governments in consultation with the World Bank and the BOTA Foundation.

9.3 The Governments of the United States of America and the Swiss Confederation each shall independently retain the right at all times, including after the Term of this Agreement, to seek the return of any or all Pictet & Cie Funds after their release if either in its sole discretion determines that any of the Pictet & Cie Funds have been used in a manner inconsistent with the terms of this Agreement, the Supervisory Agreement or the Operational Manual. Such request shall be made in writing to the Program Manager, with copies to the Board of Supervisors and the other Parties, and shall include a justification for such return. If no Party disputes the stated justification and the Program Manager fails to return any Pictet & Cie Funds so requested for deposit in the Pictet & Cie account within 60 days of the request, the Government of the Republic of Kazakhstan shall deposit into the Pictet & Cie account an amount equal to the requested sum, which amount shall be made part of the remaining Pictet & Cie Funds.

10. Communications

10.1 The authorized representative of the World Bank with respect to this Agreement is the World Bank's Country Director for Kazakhstan, or such other person designated by her/him in writing to serve in that capacity (the World Bank Representative).

10.2 The authorized representative of the Government of the United States of America with respect to this Agreement is the Deputy Assistant Attorney General for the Criminal Division, United States Department of Justice, or such other person designated by her/him in writing to serve in that capacity (the US Representative).

- 10.3 The authorized representative of the Government of the Swiss Confederation with respect to this Agreement is the Head of the Economic Cooperation and Development Division, State Secretariat for Economic Affairs (SECO), or such other person designated by her/him in writing to serve in that capacity (the Swiss Representative).
- 10.4 The authorized representative of the Government of the Republic of Kazakhstan with respect to this Agreement is the Prime Minister of Kazakhstan, or such other person designated by her/him in writing to serve in that capacity (the Kazakh Representative).
- 10.5 Upon execution of this Agreement, each Party shall promptly provide notice to each other Party of the name, title, address, electronic mail address, and telephone contact information for its Representative.
- 10.6 The BOTA Foundation, once established, is expected to designate in writing without delay its authorized representative with respect to this Agreement.
- 10.7 The Parties agree that to the extent this Agreement refers to notices or communications to the Parties, or any consents, approvals or objections from the Parties, or any decision making on the part of the Parties, any communication to or from, as the case may be, the respective Representative(s) shall constitute a communication to the Party represented by that Representative. Notices, consents, approvals, or objections of any Party must be in writing and may be made by (a) a written statement provided by a Representative or written agreement signed directly or by countersignature; (b) a fax provided by a Representative or a series of faxes signed directly or by countersignature; or (c) an email provided by a Representative or an exchange of emails confirming agreement, consent, approval or objection on the part of the Representative.
- 10.8 Each Party may amend the identity of the Representative(s) specified above by providing written notice to the other Parties of the change of identity of the person(s) designated, together with address information sufficient to communicate with the amended Representative(s). Each Party's designated Representative may delegate his/her authority to receive or provide a notice, communication, consent, approval or objection that relates to a particular issue or matter by so informing in writing the other Parties of the identity of the person(s) who shall have such delegated authority, together with address information sufficient to communicate with the amended Representative(s).
11. General
- 11.1. This Agreement, along with any other agreements to the extent they are referenced herein, comprises the entire agreement and understanding between the World Bank and the Governments relating to the subject matter hereof, and supersedes any prior arrangements, agreements or understandings between the World Bank and the Governments relating thereto. However, this Agreement does not supersede or modify any agreements, arrangements, or understandings, among or between the Governments.
- 11.2. Nothing in this Agreement shall be construed as creating a joint venture, an agency relationship or a legal partnership between the World Bank and the Governments, or the World Bank and the BOTA Foundation, or any other party referenced herein.
- 11.3. Nothing in this Agreement is intended to be, or should be construed as, a waiver of the privileges and immunities of any Party or its officers or employees, which privileges and immunities are hereby specifically reserved.


11.4. Each Party warrants that it has the authority to enter into this Agreement. No Party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, without the prior written consent of all other Parties. Any changes, variations, or amendments to the terms of this Agreement shall not be valid unless made in writing and signed by all Parties.

11.5. This Agreement does not give rise to any rights on the part of any private person or non-party.

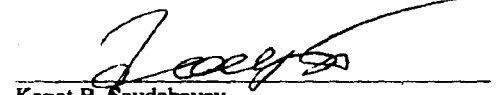
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments or organization, have signed this Agreement.

DONE at Washington, D.C., in five originals, this 2nd day of May, 2007, in the English language.

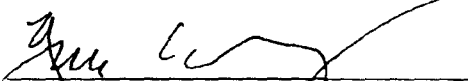
FOR THE GOVERNMENT OF
THE SWISS CONFEDERATION


Urs Ziswiler
Ambassador of Switzerland
to the United States of America

FOR THE GOVERNMENT OF
THE REPUBLIC OF KAZAKHSTAN


Kanat B. Saudabayev
Ambassador of Kazakhstan
to the United States of America

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA


Bruce C. Swartz
Deputy Assistant Attorney General
Criminal Division, U.S. Department of Justice

FOR THE INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT


Shigeo Katsu
Vice President
Europe and Central Asia Region

BOTA MOU ANNEX 3

**Memorandum of Understanding
Regarding Public Finance Management
Between the Republic of Kazakhstan and
International Bank for Reconstruction and Development
December 1, 2006**

WHEREAS the Republic of Kazakhstan (Kazakhstan) is committed to strengthening and increasing the efficiency of public finance management at all levels of government; and

WHEREAS Kazakhstan has requested and the International Bank for Reconstruction and Development (the World Bank) has agreed to provide technical assistance and advice to strengthen the public finance management in Kazakhstan:

NOW THEREFORE, the Parties agree that:

A Kazakhstan is undertaking the following activities in the area of public sector modernization and public finance management:

- (a) improvement of planning, implementation, monitoring, evaluation and audit for budget investments with clear positive externalities for recurrent expenditures;
- (b) development of capacity to implement public-private partnerships in the provision of public goods, services and infrastructure;
- (c) introduction of e-government and digital inclusion;
- (d) a new stage of tax policy reform;
- (e) improvement of the system of medical services, with a strong focus on improved public finance management of health expenditures (with clear positive externalities to the education sector as well);
- (f) an agricultural expenditures study, aimed at improving the use of public funds to support rural development;
- (g) a territorial development initiative, aimed at raising the involvement of local governments with the central government in economic and social development across the regions of Kazakhstan. This includes performance-based measures for public expenditure allocations, which should help to improve public allocations, incentives to budget managers at all levels of government, and set the stage to provide all budget managers more leeway to use their funding effectively to deliver envisaged outcomes, as opposed to strict input-based budget allocation and management, as has been the case to the present;
- (h) tax administration modernization;
- (i) customs administration modernization; and

(j) improved macroeconomic analysis to support policy making toward mitigation of the Dutch Disease, and its short term manifestations in the form of economic overheating.

B. Kazakhstan commits to:

(a) undertake a Programmatic PFM Review over the period of five years to examine and analyze the budget management process in specified sectors to formulate outline a comprehensive, realistic and strategic plan for improving public financial management in Kazakhstan, underscored by a sound macro-, fiscal, and contingent liability framework.

(b) begin a programmatic PFM Review with priority sectors such as education and health, and progressively expanding coverage to other sectors, eventually covering 90 percent of the budget over the PFM Review period of five years.

(c) as part of this work, give increased attention to analysis of the quality of recurrent expenditures and assessing any extra-budgetary funds.

(d) this Programmatic PFM Review would be used as an analytical, informational and consensus building tool upon which appropriate policy can be designed and implemented over the coming years.

(e) consider other measures for implementation through active collaboration with nongovernmental organizations.

C. The World Bank agrees that it will provide technical assistance in preparing the Programmatic PFM Review and in implementing its recommendations in the framework of the annual Joint Economic Research Program.

D. Nothing in this MOU is intended to be, or should be construed as a waiver of the privileges and immunities of either Party or its officers and employees, which privileges and immunities are hereby specifically reserved.

E. Any sharing of information between the Parties will be subject to their respective policies and procedures relating to the disclosure of information. Confidential information of the one Party shall be handled by the other Party with no lesser standard of care than it would use in handling its own confidential information.

F. In case of a dispute, controversy, or claim between the Parties arising out of or relating to this MOU or an agreement for any activity or project undertaken pursuant thereto, the Parties shall attempt to reach an amicable resolution in good faith. In the event an attempt to reach an amicable resolution proves unsuccessful within thirty days after the first Party has formally notified the dispute, controversy, or claim to the other Party in writing, any such dispute, controversy, or claim shall proceed to arbitration to be finally settled in accordance with the then-current UNCITRAL Arbitration Rules. The number of arbitrators shall be three. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration in The Hague. The language of arbitration shall be English.

G. This MOU shall come into force and effect upon signature by both Parties on the date set forth below with an initial term of three years, to be extended on a mutually agreed basis. At the end of the initial term of this MOU, a joint assessment by both Parties will be carried out to review the results and lessons learned from their collaborative activities. The views of stakeholders on the nature and progress of activities or projects may be obtained by the Parties in connection therewith. The Parties will discuss and share any conclusions reached which may have a bearing on the Parties' collaboration under this MOU. On the basis of such assessment, the Parties may keep in force, modify or terminate this MOU as provided for below. This MOU may be modified or terminated at any time by mutual written agreement of the Parties. Further, the MOU may be terminated by either Party at its sole discretion with 60 days prior notice in writing to the other Party.

H. This MOU will supersede any previous intentions or agreements communicated and agreed upon between the Parties in respect of the collaborative activities and projects contemplated herein. The persons signing this MOU on behalf of each Party hereby represents and warrants to the other Party that he or she has the requisite legal power and authority to execute this MOU on behalf of the Party and bind the Party to the obligations herein.

In witness whereof, the Parties have caused this MOU to become effective as of December 1, 2006.

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT**


Shigeo Katsu
Vice President, Europe and Central Asia

REPUBLIC OF KAZAKHSTAN


Karim Massimov
Deputy Prime Minister

BOTA MOU ANNEX 4

Memorandum of Understanding
Regarding the Extractive Industries Transparency Initiative
Between the Republic of Kazakhstan and
International Bank for Reconstruction and Development
December 1, 2006

WHEREAS the Republic of Kazakhstan (Kazakhstan) joined the group of countries implementing the Extractive Industries Transparency Initiative (EITI) in October 2005; and

WHEREAS Kazakhstan has requested and the International Bank for Reconstruction and Development (the World Bank) has agreed to provide technical assistance and advice to support measures intended to increase transparency over payments and revenues of extractive industries operating in Kazakhstan:

NOW THEREFORE, the Parties agree that:

A. Kazakhstan has established a dedicated EITI Secretariat based in the Ministry of Energy and Mineral Resources and headed by a senior Government official for the coordination of all EITI work in Kazakhstan and support of the National Stakeholder Council for EITI. The Secretariat will develop by February 1, 2007, an EITI work plan as referred to in the Prime Minister's Directive dated November 28, 2006, and manage working groups tasked with (a) improving management and transparency of Extractive Industries (EI) Companies, and (b) analyzing legislation and submitting proposals on introducing legislative amendments and additions needed for EITI implementation.

B. Kazakhstan is committed to:

- (a) ensure the full participation of all extractive industry (oil, gas, and mining) companies operating in Kazakhstan (EI companies) in the EITI consistent with EITI's Criteria #1 (publication of all payments) and EITI's Criteria #4 (involvement of all companies). This extends to all international, local, and state-owned EI Companies and their production subsidiaries. This will be achieved through Government Decree by December 15, 2006;
- (b) ensure integrity of reported data appearing in Kazakhstan's and EI Companies' EITI statements consistent with EITI Criteria #2 (data is based on audited accounts). This entails having each entity's auditors provide statements verifying that such entity's EITI statements and reports are based on existing audited accounts. This will be achieved through the same Government Decree as above and will be applicable starting January 1, 2008;
- (c) develop by February 1, 2007, a work plan for its participation in EITI and implementation of EITI steps over the next two years consistent with EITI Criteria #6 (development of a work plan). Development of the work plan will be undertaken by the dedicated EITI Secretariat and occur through consultation with various stakeholders. Kazakhstan will report to the EITI Board on the implementation status of the work plan starting June 2007;

(d) ensure adequate and sustainable financing for EITI implementation, including the cost of the Secretariat and any working groups, contracting international experts, preparing annual reports and annual reconciliation of data. Until such time that the assigned working group establishes the exact budgetary requirement, the Government has assigned a budget line in the 2007 budget to cover the expenses related to the EITI Secretariat. An inter-departmental working group has been established to analyze and report required expenditures to ensure such financing;

(e) appoint and manage an appropriate consulting or auditing firm to carry out audits in connection with the EITI program. The said firm will be selected competitively by end of May 2007;

(f) conduct a series of national and regional workshops, starting with the first workshop by end of March 2007 to promote and discuss EITI throughout Kazakhstan in conjunction with the EITI data reporting and aggregation process consistent with EITI Criteria # 1 (making EITI reports widely available in an understandable manner) and EITI Criteria # 5 (involving civil society in EITI discussions); and

(g) consider other measures for implementation through active collaboration with non-governmental organizations.

C. The World Bank agrees that it will:

(a) support the EITI process in Kazakhstan;

(b) provide ongoing technical assistance from its EITI team to Kazakhstan, including with respect to the above measures;

(c) assist in devising monitoring indicators to help Kazakhstan monitor progress;

(d) assist in sharing implementation experience and best practice lessons of other EITI-implementing countries; and

(e) consider additional implementation support on an as-needed basis, such as on-the-ground consultancy support for implementation and financial support for workshops on enabling civil society engagement in EITI.

D. Nothing in this MOU is intended to be, or should be construed as, a waiver of the privileges and immunities of either Party or its officers and employees, which privileges and immunities are hereby specifically reserved.

E. Any sharing of information between the Parties will be subject to their respective policies and procedures relating to the disclosure of information. Confidential information of the one Party shall be handled by the other Party with no lesser standard of care than it would use in handling its own confidential information.

F. In case of a dispute, controversy, or claim between the Parties arising out of or relating to this MOU, or an agreement for any activity or project undertaken pursuant thereto,

the Parties shall attempt to reach an amicable resolution in good faith. In the event an attempt to reach an amicable resolution proves unsuccessful within thirty days after the first Party has formally notified the dispute, controversy, or claim to the other Party in writing, any such dispute, controversy, or claim shall proceed to arbitration to be finally settled in accordance with the then-current UNCITRAL Arbitration Rules. The number of arbitrators shall be three. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration in The Hague. The language of arbitration shall be English.

G. This MOU shall come into force and effect upon signature by both Parties on the date set forth below with an initial term of three years, to be extended on a mutually agreed basis. At the end of the initial term of this MOU, a joint assessment by both Parties will be carried out to review the results and lessons learned from their collaborative activities. The views of stakeholders on the nature and progress of activities or projects may be obtained by the Parties in connection therewith. The Parties will discuss and share any conclusions reached which may have a bearing on the Parties' collaboration under this MOU. On the basis of such assessment, the Parties may keep in force, modify or terminate this MOU as provided for below. This MOU may be modified or terminated at any time by mutual written agreement of the Parties. Further, the MOU may be terminated by either Party at its sole discretion with 60 days prior notice in writing to the other Party.

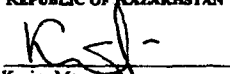
H. This MOU will supersede any previous intentions or agreements communicated and agreed upon between the Parties in respect of the collaborative activities and projects contemplated herein. The persons signing this MOU on behalf of each Party hereby represents and warrants to the other Party that he or she has the requisite legal power and authority to execute this MOU on behalf of the Party and bind the Party to the obligations herein.

In witness whereof, the Parties have caused this MOU to become effective as of December 1, 2006.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT


Shigeo Katsu
Vice President, Europe and Central Asia

REPUBLIC OF KAZAKHSTAN


Karim Massimov
Deputy Prime Minister